

The New York Times

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers [here](#) or use the "Reprints" tool that appears next to any article. Visit www.nytreprints.com for samples and additional information. [Order a reprint of this article now.](#)

PRINTER-FRIENDLY FORMAT
SPONSORED BY



April 1, 2008

Insurers Faulted as Overloading Social Security

By [MARY WILLIAMS WALSH](#)

The Social Security system is choking on paperwork and spending millions of dollars a year screening dubious applications for disability benefits, according to lawsuits filed by whistleblowers.

Insurance companies are the source of the problem, the lawsuits say. The insurers are forcing many people who file disability claims with them to also apply to Social Security — even people who clearly do not qualify for the government program.

The [Social Security Administration](#) defines “disabled” much more stringently than the insurers generally do, so it rejects most of the applications, at least initially. Often, the insurers then tell their claimants to appeal, the lawsuits say, raising the cost.

The insurers say that requiring a Social Security assessment is a standard practice and that there is nothing wrong with it.

The policies they sell allow them to coordinate their benefit payments with others to make sure no one is paid twice. Thus, if a disabled person can get benefits from somewhere else — like workers’ compensation, a disability pension or Social Security — the insurance company can reduce the benefit check by that amount.

The flood of referrals, however, is making it hard for Social Security to respond to people who are truly disabled, said Kenneth D. Nibali, the former top administrator of the Social Security disability program.

“Anybody who is forced to come into this system, and who doesn’t need to be there, is affecting someone else,” said Mr. Nibali, who retired in 2002 and is serving as an expert witness for the plaintiffs. “They’re holding up cases for the people who have been waiting for months and years, who in many cases are much worse off.”

Already, the disability program is in much worse shape financially than the old-age portion of Social Security. It is projected to run out of money in 2026, 16 years ahead of the old-age trust fund.

The disability caseload is also expected to grow as the work force ages, since recovery time increases with age. The number of people waiting for hearings on their claims by an administrative law judge has more than doubled since 2000, and the average wait has grown to 512 days in that time, from 258 days.

The Social Security Administration is not an active participant in the lawsuits and declined to comment on them. A spokesman, Mark Lassiter, said Social Security does not keep track of how many of its roughly 2.5 million annual applicants for disability are referred by insurance companies. But he cited academic research showing that 18 percent acknowledged privately that they were unqualified, because they could still work. "It is probable that many of these claimants were required to apply," Mr. Lassiter said.

Jessica Ortiz, a 27-year-old gas station attendant in San Diego, said that was what happened to her. Her disability insurer, the [Unum Group](#), called more than 10 times after she was hurt in a car crash, insisting that she apply for Social Security and asking repeatedly where her application stood. Unum was paying her only \$50 a month under her policy, she said, which seemed a small amount to merit so much attention.

She did not need or want money from Social Security, and did not think she was entitled to it. Her doctors had told her she would recover, and Social Security is limited to people whose disabilities are total and permanent. But she applied because Unum insisted, she said.

Ten months after her accident, Ms. Ortiz returned to work. Social Security turned her down, as she had expected. People who can work are by definition unqualified for disability pay from the government. But when she told the Unum representative what had happened, he told her she could still appeal.

"If I were the government, I'd be pretty upset," she said. "No wonder the pot could run out of money."

When the circumstances of Ms. Ortiz's case were described, a spokesman for Unum said he could not comment without reviewing her case file. The spokesman, Jim Sabourin, said the company believed that it always had valid reasons for telling people to apply for Social Security.

Forcing people who are injured to apply for Social Security before paying their claims appears to bolster insurers' profits in several ways. If claimants refuse to apply, the insurers can simply stop paying their benefits, said Dawn Barrett, an employee of the [Cigna Corporation](#), who grew frustrated sending people to Social Security and who is now a plaintiff in one of the lawsuits. More typically, she said, people apply for Social Security when an insurer tells them to. That allows the insurer to reduce its claim reserves, money that is kept in conservative investments for benefit payments. And in the insurance industry, smaller reserves mean bigger profits.

"It's all about the numbers," Ms. Barrett said.

Finally, disability insurers tell many of their claimants to appeal Social Security's rejections again and again, until some are finally accepted. Then the insurers can take those people off their rolls, shifting the cost to the government.

Whistle-blowers have filed lawsuits against the Unum Group, America's largest disability insurer, and Cigna, another large one, though there is no dispute that the Social Security requirement is an industrywide practice. Unum, with revenue of \$10.5 billion, paid disability claims of \$4 billion last year.

Both companies said their claims practices were fair, legal and consumer-friendly.

"Our goal is to ensure that each member receives all of the benefits to which he or she is entitled," said Jill Roman, a spokeswoman for Cigna.

The lawsuits do not fault the idea of coordinating benefits with Social Security and workers' compensation. Instead, they contend that insurers are recklessly dumping people on Social Security's doorstep, without properly screening them to make sure they have a chance of qualifying.

The typical long-term disability policy says workers can collect when they are unable to do their own jobs for some period, usually more than five months. Social Security, by contrast, will pay only those people who are so badly disabled they cannot do any job at all. The disability must be one that will last more than 12 months or that will lead to death within that time.

Mr. Sabourin, the spokesman for Unum, denies the suits' accusations and says that his company does screen people. He said Unum considered it in the best interests of its claimants to try for Social Security, because the federal program offers advantages over

private insurance. Even though the federal requirements are tough, he said, Social Security has certain exceptions and trial programs that Unum's claimants might qualify for.

Unum is also concerned that the lawsuits might lead to changes in federal rules that require Social Security to vet all applications thoroughly. Any changes might drive up the cost of disability insurance premiums, Mr. Sabourin added. Unum plans to file a motion for a summary judgment in its lawsuit, which is in Federal District Court in Boston. The case is to be heard this fall.

Both whistle-blower lawsuits cite the federal False Claims Act, a law that allows affected government programs to recover triple damages. The lawsuits were brought by people contending that the insurers were knowingly committing fraud.

Mr. Nibali, the retired Social Security administrator, says the disability program has "an open-door policy" and is required to seriously consider all applications, even those that might seem improbable. While deciding whether a 65-year-old should get retirement benefits is relatively quick and easy; deciding whether someone should get disability benefits is not. The Social Security Administration compiles detailed medical records, sends applicants to doctors for examinations and tests, reviews their work histories and sometimes interviews their friends and relatives.

Rejections can be appealed again and again.

"A person can come in and file a disability claim with us as many times as they want to," Mr. Nibali said.

Linda Simmond, a 41-year-old mother in Atlanta, has been at it for four years. She worked as the supervisor of 10 Little Caesars pizza shops in Detroit but had to stop when she was found to have carpal tunnel syndrome, a wrist injury, from rolling out pizza dough. Surgery did not help.

Little Caesar Enterprises was insured through Unum, which started paying Ms. Simmond disability benefits of about \$1,780 a month, but told her she had to apply for Social Security. She did so, and was rejected. Ms. Simmond thought that was correct.

"I'm not totally disabled," she said. "I've seen people with one hand, no legs, working, so I know I can do something."

Unum told her to appeal. She refused. Unum stopped sending her checks. After several months with no income, Ms. Simmond relented and filed the appeal. Unum then resumed

her payments — but before long, Social Security rejected her again, and the whole cycle began anew.

Unum is now paying Ms. Simmond her benefits, but warning her that if she does not apply for Social Security again, it will stop her checks a third time, she said. “I need my benefits,” she said. “I have two children. I have a lot of debts. I’m going to have to do it, but I don’t believe in it.”

When Ms. Simmond’s situation was described to him, Mr. Sabourin said he could not comment on it without reviewing her case file.

Mr. Nibali has calculated that it costs \$1,180, on average, to process a single Social Security disability application to the first decision, usually a rejection. If the applicant persists through the first three levels — the initial review, a reconsideration and a hearing by an administrative law judge — the case will cost the system an average of \$4,759, he found. It is possible to appeal even higher, adding further to the cost. Lawyers from the firm Phillips & Cohen, in Washington, who are representing the plaintiffs, have been working with statistical samples. Their numbers suggest that the industry has been sending tens of thousands of dubious claims to Social Security, costing the system hundreds of millions of dollars over the last decade.

Mr. Nibali said he believed that Cigna, Unum and other disability insurers had enough data on their claimants to weed out many meritless applications before sending so many people to Social Security. That would help the program’s finances, he said. “We’re not here to give money away.”

[Copyright 2009 The New York Times Company](#)

[Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#) |